

RECORDATION NO. 11043 Filed 1425

NOV 13 1979 - 11 55 AM

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

RECORDATION NO. 11043 Filed 1425

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ICC Washington, D. C.

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November 13, 1979

Consolidated Rail Corporation ("Conrail")  
Lease Financing Dated as of September 15, 1979  
11% Conditional Sale Indebtedness Due 1994

[CS&M Ref: 2043-949]

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a), I enclose here-with on behalf of Consolidated Rail Corporation ("Conrail"), for filing and recordation, counterparts of the following:

- (1) (a) Conditional Sale Agreement dated as of September 15, 1979, between The Connecticut Bank and Trust Company and Shenandoah-Virginia Corporation; and
- (b) Agreement and Assignment dated as of September 15, 1979, between Mercantile-Safe Deposit and Trust Company and Shenandoah-Virginia Corporation;
- (2) (a) Lease of Railroad Equipment dated as of September 15, 1979, between Consolidated Rail Corporation and The Connecticut Bank and Trust Company; and
- (b) Assignment of Lease and Agreement dated as of September 15, 1979, between The Connecticut Bank and Trust Company and Mercantile-Safe Deposit and Trust Company.

*Conrail*  
*Joseph B. M...*

The addresses of the parties to the aforementioned agreements are:

Lessor-Trustee-Vendee:

The Connecticut Bank and Trust Company,  
One Constitution Plaza,  
Hartford, Connecticut 06115.

Builder-Vendor:

Shenandoah-Virginia Corporation,  
8 North Jefferson Street,  
Roanoke, Virginia 24042.

Lessee:

Consolidated Rail Corporation,  
1310 Six Penn Center Plaza,  
Philadelphia, Pennsylvania 19104.

Agent-Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company,  
Two Hopkins Plaza,  
Baltimore, Maryland 21203.

The equipment covered by the aforementioned agreements consists of 164 100-ton Open Top Hopper Cars bearing the road numbers of the Lessee CR490876-CR491039 and also bearing the legend "Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission".

Enclosed is our check for \$100 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt addressed to the undersigned.

Very truly yours,



Martin D. Jacobson  
As Agent for Consolidated  
Rail Corporation.

Agatha Mergenovich, Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

**OFFICE OF THE SECRETARY**

Martin Jacobson  
Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/13/79 at 11:55am , and assigned re-  
recording number(s). 11043, 11043-A, 11043-B & 11043-C

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

11043  
RECORDATION NO. .... Filed 1425

NOV 13 1979 -11 55 AM

[CS&M Ref. 2043-949]

INTERSTATE COMMERCE COMMISSION

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CONDITIONAL SALE AGREEMENT

Dated as of September 15, 1979

between

SHENANDOAH-VIRGINIA CORPORATION

and

THE CONNECTICUT BANK AND TRUST COMPANY,  
as Trustee

11% Conditional Sale Indebtedness Due 1994

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Conditional Sale Agreement

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\* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

CONDITIONAL SALE AGREEMENT dated as of September 15, 1979, between SHENANDOAH-VIRGINIA CORPORATION, a Virginia corporation, (said corporation being hereinafter called the "Builder" or the "Vendor", as the context may require, all as more particularly set forth in Article 1 hereof) and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not in its individual capacity but solely as Trustee, except as herein otherwise specifically provided (the "Vendee"), under a Trust Agreement dated as of the date hereof with BWL, Inc. (the "Beneficiary").

WHEREAS the Builder agrees to arrange to have constructed, to conditionally sell and to deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (the "Equipment");

WHEREAS the Vendee is entering into a Lease of Railroad Equipment with Consolidated Rail Corporation (the "Lessee") in substantially the form annexed hereto as Annex C (the "Lease") pursuant to which the Lessee will lease from the Vendee all the units of Equipment so purchased, or such lesser number of units as are delivered and accepted hereunder; and

WHEREAS Mercantile-Safe Deposit and Trust Company (hereinafter called the "Assignee" or the "Vendor" as more particularly set forth in Article 1 hereof) is acting as Agent for institutional investors pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Assignee, the Lessee, the Vendee, the Beneficiary, and the parties named in Schedule A thereto, and all obligations of the Vendee to the Builder under the Purchase Order (as defined in the Participation Agreement) will be superseded by this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that por-

tion of the Purchase Price (as hereinafter defined) of the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment (the "CSA Assignment") dated as of the date hereof between the Builder and the Assignee.

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the Builder and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the Builder and any successor or successors for the time being to its manufacturing properties and business.

The parties hereto contemplate that the Vendee will assign to the Assignee, as security for the payment and performance of all the Vendee's obligations hereunder, certain rights, titles, and interests of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in the form of Annex D hereto (the "Lease Assignment").

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall arrange to have constructed the units of Equipment and will conditionally sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided and subject to the limitations hereinafter set forth), the Equipment, each unit of which shall be constructed in accordance with the Purchase Order (to the extent the Purchase Order covers matters not covered herein) and the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing among the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all requirements, if any, set forth in the Manual of Standards and Recommended

Practices issued by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment, will not incorporate any used components (or, if such components are incorporated, their aggregate cost will not exceed 5% of the cost of materials and parts used in constructing such unit), and will not have been used by any person so as to preclude the "original use" of such unit, within the meaning of Sections 48(b)(2) and 167(c)(2) of the Internal Revenue Code of 1954, as amended, from commencing with the Vendee.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee on the several Closing Dates at the place or places specified in Annex B hereto, freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made (i) until the filings and deposits with the Interstate Commerce Commission and the Registrar General of Canada referred to in Article 18 hereof have been made; (ii) subsequent to receipt of notice by the Builder from the Vendee or the Assignee of the commencement of any proceedings or the occurrence of any event specified in clause (c) or (d) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default (any such commencement, occurrence, event of default or event being hereinafter in this Agreement called a "Default"); or (iii) if the Purchase Price for such unit when added to the aggregate Purchase Price of (A) all units theretofore delivered and accepted under and made subject to this Agreement and (B) all other units proposed to be delivered and accepted under and made subject to this Agreement concurrently with such unit would exceed the Maximum Purchase Price for the Equipment specified in Item 5 of Annex A hereto. The Builder agrees not to deliver any unit of the Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee (i) of a Default, or (ii) that the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may have agreed to pursuant to Article 4) would be exceeded by any subsequent delivery of a unit, or (iii) of its determination that there has been a material adverse change in the business prospects or financial condition of the Lessee since the date of the most recent financial statements referred to in Paragraph 4(b) of the Participation Agreement, other than as set forth

in the Memorandum referred to in the Participation Agreement, and (b) until it receives notice from the Vendee and the Assignee that the conditions contained in Paragraphs 7 and 8 of the Participation Agreement have been met. Notwithstanding any other provision hereof, the Builder shall have no obligation to deliver any unit of Equipment hereunder except against payment to it of the full Purchase Price thereof, it being contemplated that an amount equal to the Purchase Price payable hereunder in installments will be paid to the Builder on the several Closing Dates by the Assignee pursuant to the CSA Assignment.

Any unit of Equipment not delivered at the time of receipt by the Builder of the notice specified in clause (a) of the last sentence of the first paragraph of this Article 3 and any unit of Equipment not delivered and accepted hereunder on or prior to December 31, 1979, by reason of noncompliance with the conditions referred to in the next preceding paragraph or causes set forth in the next succeeding paragraph or otherwise shall be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such unit of Equipment. If any unit of Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the Vendee and the Builder (and any assignee of the Builder) shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. Pursuant to the Participation Agreement, the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof from the Builder, upon the satisfaction or waiver of any conditions of the Purchase Order, all as provided in Paragraph 1 of the Participation Agreement. The Vendee agrees, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting any interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

The Builder's obligation as to the time of delivery set forth in Annex B is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differ-

ences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with its standard quality control practices. Upon completion of each unit or a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") substantially in the form of Schedule C to the Lease; provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Article 13 hereof.

Upon acceptance of delivery of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit, such risk thereupon, as between the Builder and the Vendee, passing to the Vendee; provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit created in or transferred to or purported to be created in or transferred to the Vendee shall be held by the Vendee solely as trustee for the benefit of the Builder.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in

Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee, including prepaid freight and storage charges, if any. The term "Purchase Price" as used herein shall mean the base price or prices per unit of the Equipment (F.O.B. Roanoke, Virginia) as so increased or decreased as set forth in the Builder's invoice or invoices delivered to the Vendee (the "Invoices") and, if the Purchase Price is other than the base price or prices set forth in Annex B, the Invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee. If on any Closing Date the aggregate Purchase Price of the Equipment for which settlement has theretofore been or is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than such Maximum Purchase Price (or such higher amount as aforesaid).

The Equipment shall be settled for in such number of groups of units of the Equipment as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a "Group"). The term "Closing Date" with respect to any Group shall mean such date, which shall be a business day not later than December 31, 1979 (the "Final Closing Date"), occurring not more than 10 business days after presentation by the Builder to the Vendee of the Invoices and Certificates of Acceptance for such Group and written notice thereof by the Builder to the Lessee, as shall be fixed by the Builder by written notice delivered to the Vendee, the Lessee and the Assignee at least five business days prior to the Closing Date designated therein (unless such notice requirement is waived by the Vendee, the Lessee and the Assignee). The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York or Baltimore, Maryland, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby agrees to pay in immediately available funds to the Vendor at such

place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group (i) an amount equal to 32.36% of the aggregate Purchase Price of such Group plus (ii) the amount, if any (resulting from an agreement or approval by the Vendee pursuant to the fourth sentence of the first paragraph of this Article 4), by which (x) the Purchase Price (not paid pursuant to clause (i)) of all units of Equipment for which settlement has theretofore or is then being made, as set forth in the Invoices therefor exceeds (y) the Maximum CSA Indebtedness specified in Item 6 of Annex A hereto and any amount or amounts previously paid or payable with respect to prior Invoices pursuant to this clause (ii); and

(b) in 58 quarterly installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (the "CSA Indebtedness") shall be payable on April 15, July 15, October 15 and January 15 of each year, commencing April 15, 1980, to and including July 15, 1994 (or, if any such date is not a business day, on the next preceding business day), each such date being hereinafter called a "Payment Date". The unpaid balance of the CSA Indebtedness from time to time outstanding shall bear interest at the rate of 11% per annum payable, to the extent accrued, on January 15, 1980, and on each Payment Date. The installments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the allocation set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal will completely amortize the CSA Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after the last Closing Date an amortization schedule showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of 12 30-day months except that the interest payment due on January 15, 1980, shall be determined on an actual elapsed day, 365-day year, basis.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 12% per annum (the "Overdue Rate").

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder and excluding only the obligations set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" (as hereinafter defined), and such payments shall be made by the Vendee only to the extent that the Vendee (or any such assignee) shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendee (and any such assignee) shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". In addition, it is agreed that the Vendee (and such assignee) (i) make no representation or warranty with respect to, and are not responsible for, the execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto) insofar as it relates to the Lessee or to any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15

hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee (or any such assignee) at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease, and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee (or any such assignee) and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include (A) amounts referred to in the foregoing clauses (a) and (b) received by the Vendee (or any such assignee) prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including such prepayments) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee (or any such assignee) were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease and (B) amounts excluded from the definition of "Payments" contained in Paragraph 1 of the Lease Assignment. Notwithstanding anything to the contrary contained in this Agreement, in the event the Vendor shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, the Vendor will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and accrued interest thereon and all

other payments and obligations hereunder.

ARTICLE 5. Security Title to the Equipment. The Vendor shall and hereby does retain a security title and security interest in the Equipment until the Vendee shall have made all its payments under this Agreement, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease. Any and all parts installed on and additions and replacements made to any unit of the Equipment (except as otherwise specifically provided in § 9 of the Lease) shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with accrued interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment releasing its security title to and interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee and (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment. The Vendee hereby waives any and all rights, existing or that may be acquired, in or to the payment of any penalty or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law requiring the filing of the same, except for failure so to do within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the

Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by net income, excess profits taxes and similar taxes) or license and registration fees, levies, imposts, duties, assessments, charges, fines, penalties or additions to tax hereafter levied or imposed upon or in connection with or measured by this Agreement or the Equipment or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license and registration fees, levies, imposts, duties, assessments, charges, fines, penalties or additions to tax being hereinafter called "impositions"), all of which impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title or interests of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the title or interests or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

ARTICLE 7. Maintenance; Casualty Occurrences. The Vendee shall, at its own cost and expense, maintain and ser-

vice each unit of Equipment and comply with a preventive maintenance schedule consistent with the Builder's preventive maintenance schedules, all as provided in the first paragraph of § 7 of the Lease.

In the event that any unit of the Equipment shall suffer a Casualty Occurrence (as defined in § 7 of the Lease), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the date corresponding to the Casualty Payment Date (as defined in § 7 of the Lease) (hereinafter called a "Casualty Payment Date"), the Vendee shall pay to the Vendor an amount equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of such Casualty Payment Date and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal, if any, on and of the CSA Indebtedness due on such date) to prepay without penalty or premium the installments of the CSA Indebtedness (ratably in accordance with the unpaid balance of each such installment) together with all unpaid and accrued interest thereon, and the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest with respect to the CSA Indebtedness thereafter to be made. In the event of the requisition for use by the United States Government or any other government or governmental entity of any unit of the Equipment not constituting a Casualty Occurrence, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's security title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the

Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the Casualty Payment Date (after giving effect to the scheduled payment of principal and interest due and made on such date) with respect to such unit (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such Casualty Payment Date. For the purpose of this paragraph, each payment of Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

The Vendee will cause the Equipment to be insured as provided in the last paragraph of § 7 of the Lease. If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to having received payment of the Casualty Value and provided no Default shall have occurred and be continuing, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon reasonable proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of the first paragraph of this Article 7, provided no Default shall have occurred and be continuing.

ARTICLE 8. Reports and Inspections. On or before April 30 in each year, commencing with the year 1980, the Vendee shall cause to be furnished to the Vendor a certificate to the effect set forth in § 8 of the Lease.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause

to be replaced promptly any such markings which may be removed, defaced or destroyed. The Vendee will not permit the identification number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed and deposited by the Vendee in all public offices where this Agreement shall have been filed and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the lessee thereof or its affiliates.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all Applicable Rules (as defined in § 9 of the Lease) and in the event that such Applicable Rules require any alteration, replacement, addition or modification of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such Applicable Rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The parties hereto acknowledge that the Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall, subject to the provisions of the second paragraph of § 12 of the Lease, be

subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee, the Beneficiary or their respective successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the interest of the Vendor therein, or the Vendee's interests in the Lease and the payments to be made thereunder, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the title or interests of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of such liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that the Vendee will pay or discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Vendee or (to the extent that funds are available in the Trust Estate) the Beneficiary or their respective successors or assigns, not arising out of the transactions contemplated hereby (but including income taxes arising out of the receipt of the rentals and other payments under the Lease and any other proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder, or would result in the bankruptcy or reorganization of the Beneficiary or the Vendee but the Vendee shall not be required to pay or discharge any such claim so long as the

validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to, counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any claim for patent, trademark or copyright infringement, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title thereto or a security interest therein remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, Taxes (as defined in the Lease) measured by net income and, except, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the Vendor's security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder (except as provided in Article 21 hereof) in the event of, any damage to or the destruction or loss of any unit of or all the Equipment from and after acceptance of delivery thereof by the Vendee.

The Builder represents and warrants to the Vendee that, immediately prior to the time of delivery and acceptance of each unit of Equipment under this Agreement, the Builder will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

The Builder represents that it is not entering into this Agreement, or into any other transaction contemplated by the Participation Agreement, directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, insofar as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974, as amended.

The agreements of the parties relating to the Builder's warranty of material and workmanship and patent indemnification, and the agreement of the parties relating to the Builder's limitation of liability, are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment, or sell, assign or otherwise dispose of any of its rights under this Agreement, except as provided in the Trust Agreement.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, together with a copy of such assignment, stating the

identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee at such address as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the CSA Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 10 business days after the date such payment is due and payable; or

(b) default shall be made in the observance or performance of any other of the conditions and agreements

on the part of the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee contained herein or in any agreement entered into concurrently herewith relating to the financing of the Equipment (other than the Lease), and such default shall continue for 30 days after the earlier of (i) written notice from the Vendor to the Vendee and the Lessee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any trust officer of the Vendee (the term "known to any trust officer of the Vendee" shall mean actual knowledge by a responsible officer of the corporate trust department of the Vendee); or

(c) a petition for reorganization under Title 11 of the United States Code (as now or hereafter constituted) shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

(d) any other proceeding shall be commenced by or against the Vendee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder or of the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and,

unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee under this Agreement or of the Lessee under the Lease, as the case may be, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree by the trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession or use of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(f) an Event of Default (as defined in the Lease) shall have occurred; provided, however, that any Event of Default under clause (A) of § 10 of the Lease shall not be deemed to be an event of default hereunder if (i) within the 10 business-day period provided by subparagraph (a) of this Article 15, the Vendee shall make payment of all amounts in default under said subparagraph (a), and (ii) not more than 6 such Events of Default shall have occurred and not more than 4 such Events of Default shall have occurred on consecutive dates;

then at any time after the occurrence of such an event of default and so long as such event of default is continuing the Vendor may, subject to the provisions of Paragraph 1 of the Lease Assignment, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor,

(i) subject to the proviso in the second paragraph of § 4 of the Lease relating to termination and to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, cause the Lease immediately upon such notice to terminate, but the Lessee shall remain liable as therein provided, and/or (ii) declare (herein called a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of the CSA Indebtedness and interest shall bear interest from the date of such Declaration of Default at the Overdue Rate, to the extent legally enforceable; provided, however, that if the event or events of default which have occurred and are continuing are solely (a) under Article 15(f) hereof, (b) due to a default by the Lessee referred to in Article 15(b) hereof or (c) due to the commencement of proceedings, or the filing of a petition, referred to in Articles 15(c) or 15(d) hereof, by or against the Lessee, the Vendor must, if it elects to act, act pursuant to both clause (i) and clause (ii). Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, subject to the provisions of Articles 4 and 21 hereof, and to collect such judgment out of the "income and proceeds of the Equipment" wherever situated.

The Vendor may, at its election, subject to the provisions of Paragraph 1 of the Lease Assignment, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such

further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or any portion thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Units have been interchanged or which may have possession thereof to return such rolling stock so interchanged) cause the Equipment to be placed upon such storage tracks or other premises of the Lessee or any of its affiliates as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks or other premises at the risk of the Vendee without charge for insurance, rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to any reasonable place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure (to the same extent as provided in § 7 of the Lease), maintain and keep each such unit in good order

and repair (to the same extent as provided in the first paragraph of Article 7 hereof) and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver, assemble, store, insure and transport the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee, the Beneficiary and the Lessee by telegram or registered mail, and to any other persons to whom the law may require notice, within 60 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 60-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 60-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, however, that if the Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 60 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise

be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York or Philadelphia, Pennsylvania at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Vendee or the Beneficiary may bid for and become the purchaser of

the Equipment, or any unit thereof, so offered for sale. The Vendee, the Lessee and the Beneficiary shall be given written notice of such sale or the making of a contract for such sale not less than 10 business days prior thereto, by telegram or registered mail. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where fewer than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Vendee and the Beneficiary to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon

from the date of such demand to the date of payment at the Overdue Rate, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee; it being understood that any personal liability of The Connecticut Bank and Trust Company in its individual capacity under this paragraph and the next succeeding paragraph is limited as provided in Article 21 hereof. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Vendee will (a) cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto, to be filed in accordance with 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada; (b) from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and (c) promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement and the CSA Assignment, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly made if delivered or mailed to it by registered mail (unless otherwise specifically required herein), postage prepaid, at the following addresses:

(a) to the Vendee, at One Constitution Plaza,  
Hartford, Connecticut 06115, Attention of Corporate  
Trust Department,

(b) to the Lessee, at 1310 Six Penn Center Plaza,  
Philadelphia, Pennsylvania 19104, Attention of Assistant  
Treasurer-Financing & Collections,

(c) to the Builder at its address specified in Item 1 of Annex A hereto,

(d) to the Assignee, at its address at P. O. Box 2258, Baltimore, Maryland 21203, Attention of Corporate Trust Department,

(e) to the Beneficiary at its address set forth in the Participation Agreement,

(f) to any assignee of the Vendor, the Assignee or the Vendee, at such address as may have been furnished in writing to the Vendee, the Vendor or the Assignee, as the case may be, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties referred to above.

ARTICLE 21. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement (including any obligation referred to in the next succeeding paragraph), or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto (or of any Beneficiary) whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the second paragraph of Article 16 (including the provisions thereof with respect to insurance, maintenance and repair) and under Articles 3, 6, 7 (other than the second and third sentences of the second paragraph thereof), 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default pursuant to Article 15 hereof.

Anything in this Agreement to the contrary notwithstanding, each and all of the representations, undertakings

and agreements herein made on the part of the Vendee are made and intended not as personal representations, undertakings and agreements by The Connecticut Bank and Trust Company or for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the said financial institution solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or responsibility hereunder is assumed by or shall at any time be enforceable against the said financial institution (except liability under the proviso contained in the last paragraph of Article 12 hereof only to the extent provided in the last sentence of Section 3.04 of the Trust Agreement) or the Beneficiary (except as provided in the Trust Agreement) on account of any representation, undertaking or agreement hereunder of the Vendee or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same, subject to the provisions of Article 4 hereof. The Vendee agrees not to enter into any supplement or amendment to the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

ARTICLE 22. Law Governing. The Vendee warrants that its chief place of business is located in the state specified in clause (a) of Article 20 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Connecticut; provided, however, that the parties shall be entitled to any additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the CSA Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. For evidentiary purposes any fully executed counterpart hereof

shall be sufficient for establishing the terms of this Agreement. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

SHENANDOAH-VIRGINIA CORPORATION,

by

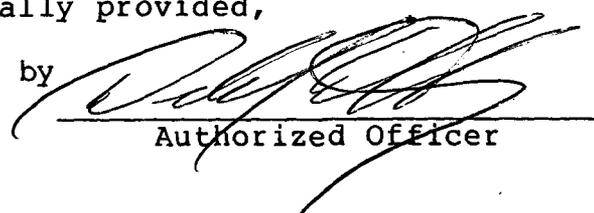
[Corporate Seal] \_\_\_\_\_

Attest:  
\_\_\_\_\_

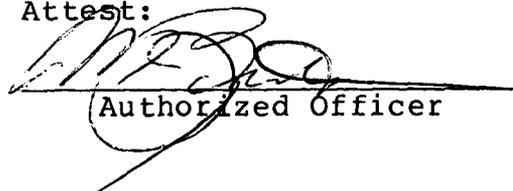
THE CONNECTICUT BANK AND TRUST COMPANY, not individually but solely as Trustee, except as otherwise hereinabove specifically provided,

by

[Corporate Seal]

  
\_\_\_\_\_  
Authorized Officer

Attest:

  
\_\_\_\_\_  
Authorized Officer

COMMONWEALTH OF VIRGINIA, )  
 ) ss.:  
COUNTY OF ROANOKE, )

On this            day of            1979, before  
me personally appeared           , to me  
personally known, who, being by me duly sworn, says that he  
is a            of SHENANDOAH-VIRGINIA  
CORPORATION, that one of the seals affixed to the foregoing  
instrument is the corporate seal of said corporation, and  
that said instrument was signed and sealed on behalf of  
said corporation by authority of its Board of Directors,  
and he acknowledged that the execution of the foregoing  
instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this *8th* day of *November* 1979, before  
me personally appeared **DONALD E. SMITH**, to me  
personally known, who, being by me duly sworn, says that  
he/she is an Authorized Officer of THE CONNECTICUT BANK AND  
TRUST COMPANY, that one of the seals affixed to the foregoing  
instrument is the corporate seal of said corporation, and  
that said instrument was signed and sealed on behalf of  
said corporation by authority of its Board of Trustees, and  
he/she acknowledged that the execution of the foregoing  
instrument was the free act and deed of said corporation.

*Barbara S. Kacich*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

**BARBARA S. KACICH**  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 31, 1982

## SCHEDULE I

Allocation Schedule of Each \$1,000,000  
of 11% CSA Indebtedness

<u>Payment Date</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Repayment</u>	<u>Principal Balance</u>
January 15, 1980 (interim date)	*	*		\$1,000,000.00
April 15, 1980	\$ 34,692.70	\$ 27,500.00	\$ 7,192.70	992,807.30
July 15, 1980	34,692.70	27,302.20	7,390.50	985,416.80
October 15, 1980	34,692.70	27,098.96	7,593.74	977,823.06
January 15, 1981	34,692.70	26,890.13	7,802.57	970,020.49
April 15, 1981	34,692.70	26,675.56	8,017.14	962,003.35
July 15, 1981	34,692.70	26,455.09	8,237.61	953,765.74
October 15, 1981	34,692.70	26,228.56	8,464.14	945,301.60
January 15, 1982	34,692.70	25,995.79	8,696.91	936,604.69
April 15, 1982	34,692.70	25,756.63	8,936.07	927,668.62
July 15, 1982	34,692.70	25,510.89	9,181.81	918,486.81
October 15, 1982	34,692.70	25,258.39	9,434.31	909,052.50
January 15, 1983	34,692.70	24,998.94	9,693.76	899,358.74
April 15, 1983	34,692.70	24,732.37	9,960.33	889,398.41
July 15, 1983	34,692.70	24,458.46	10,234.24	879,164.17
October 15, 1983	34,692.70	24,177.01	10,515.69	868,648.48
January 15, 1984	34,692.70	23,887.83	10,804.87	857,843.61
April 15, 1984	34,692.70	23,590.70	11,102.00	846,741.61
July 15, 1984	34,692.70	23,285.39	11,407.31	835,334.30
October 15, 1984	34,692.70	22,971.69	11,721.01	823,613.29
January 15, 1985	34,692.70	22,649.37	12,043.33	811,569.96
April 15, 1985	34,692.70	22,318.17	12,374.53	799,195.43
July 15, 1985	34,692.70	21,977.87	12,714.83	786,480.60
October 15, 1985	34,692.70	21,628.22	13,064.48	773,416.12
January 15, 1986	34,692.70	21,268.94	13,423.76	759,992.36
April 15, 1986	34,692.70	20,899.79	13,792.91	746,199.45
July 15, 1986	34,692.70	20,520.48	14,172.22	732,027.23
October 15, 1986	34,692.70	20,130.75	14,561.95	717,465.28
January 15, 1987	34,692.70	19,730.30	14,962.40	702,502.88
April 15, 1987	34,692.70	19,318.83	15,373.87	687,129.01
July 15, 1987	34,692.70	18,896.05	15,796.65	671,332.36
October 15, 1987	34,692.70	18,461.64	16,231.06	655,101.30
January 15, 1988	34,692.70	18,015.29	16,677.41	638,423.89
April 15, 1988	34,692.70	17,556.66	17,136.04	621,287.85
July 15, 1988	34,692.70	17,085.42	17,607.28	603,680.57

<u>Payment Date</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Repayment</u>	<u>Principal Balance</u>
October 15, 1988	\$ 34,692.70	\$ 16,601.22	\$ 18,091.48	\$ 585,589.09
January 15, 1989	34,692.70	16,103.70	18,589.00	567,000.09
April 15, 1989	34,692.70	15,592.50	19,100.20	547,899.89
July 15, 1989	34,692.70	15,067.25	19,625.45	528,274.44
October 15, 1989	34,692.70	14,527.55	20,165.15	508,109.29
January 15, 1990	34,692.70	13,973.01	20,719.69	487,389.60
April 15, 1990	34,692.70	13,403.21	21,289.49	466,100.11
July 15, 1990	34,692.70	12,817.75	21,874.95	444,225.16
October 15, 1990	34,692.70	12,216.19	22,476.51	421,748.65
January 15, 1991	34,692.70	11,598.09	23,094.61	398,654.04
April 15, 1991	34,692.70	10,962.99	23,729.71	374,924.33
July 15, 1991	34,692.70	10,310.42	24,382.28	350,542.05
October 15, 1991	34,692.70	9,639.91	25,052.79	325,489.26
January 15, 1992	34,692.70	8,950.95	25,741.75	299,747.51
April 15, 1992	34,692.70	8,243.06	26,449.64	273,297.87
July 15, 1992	34,692.70	7,515.69	27,177.01	246,120.86
October 15, 1992	34,692.70	6,768.32	27,924.38	218,196.48
January 15, 1993	34,692.70	6,000.40	28,692.30	189,504.18
April 15, 1993	34,692.70	5,211.36	29,481.34	160,022.84
July 15, 1993	34,692.70	4,400.63	30,292.07	129,730.77
October 15, 1993	34,692.70	3,567.60	31,125.10	98,605.67
January 15, 1994	34,692.70	2,711.66	31,981.04	66,624.63
April 15, 1994	34,692.70	1,832.18	32,860.52	33,764.11
July 15, 1994	34,692.62	928.51	33,764.11	.00
<b>TOTALS</b>	<b><u>\$2,012,176.52</u></b>	<b><u>\$1,012,176.52</u></b>	<b><u>\$1,000,000.00</u></b>	

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\* Interest only on the CSA Indebtedness shall be payable to the extent accrued on this date.

## Annex A

to

## Conditional Sale Agreement

Item 1: Shenandoah-Virginia Corporation  
8 North Jefferson Street  
Roanoke, Virginia 24042.

Attention of David K. Heidish,  
Treasury Department.

With a copy to:

Norfolk and Western Railway Company  
Law Department  
Roanoke, Virginia 24042.

Attention of J. Gary Lane, Esq.

Item 2: The Equipment shall be settled for in not more than four Groups of Equipment, unless another number shall be agreed to by the parties hereto.

Item 3: The Builder warrants to the Vendee that the Equipment will be built in accordance with the specifications, requirements and standards referred to in Article 2 hereof and warrants the Equipment will be free from defects in material or design (except as to articles, materials or designs incorporated therein which were specified or supplied by the Vendee and not manufactured or designed by the Builder) and workmanship under normal use and service, the Builder's obligation under this paragraph being limited to repairing or replacing any part or parts of any Item of Equipment which shall be returned, within one year or 50,000 miles, whichever occurs first, after the delivery of such Item to the Vendee, to the Builder with transportation charges prepaid to a repair facility which shall be designated by the Builder (provided, however, that such designation by Builder shall be in good faith and reasonable under the circumstances) and which the Builder's examination shall disclose to its satisfaction to have been thus defective. THE

FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction of the Equipment except as aforesaid and except as provided specifically hereinafter. It is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind. The Builder further agrees with the Vendee that neither the inspection nor any examination or acceptance of any Units of the Equipment shall be deemed a waiver or a modification by the Vendee or Builder, of any of its rights.

- Item 4: Except in cases of articles or materials specified by the Vendee or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless, the Vendee and any assignee thereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee or any assignee thereof because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. In case any of the Equipment is determined to infringe on any patent or other similar right in respect of which liability may be charged against the Builder and/or the use of any of the Equipment is enjoined, the Vendee, its successors or assigns, may pursue any and all remedies available to it against the Builder, whether at law or in equity. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Vendee every claim right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any

designs, systems, processes, formulae, combinations, articles or materials specified by the Vendee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right; and the Builder further agrees to execute and deliver to the Vendee all and every such further assurance as may be reasonably requested by the Vendee more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give prompt notice to the Vendee, and any assignee thereof known to Builder, of any claim known to the Builder from which liability may be charged against the Vendee or any assignee thereof, and the Vendee or any assignee thereof will give prompt notice to the Builder and any assignee of the Builder known to the Vendee of any claim from which liability may be charged against the Builder or one of them hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

- Item 5: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$6,050,000.
- Item 6: The Maximum CSA Indebtedness referred to in Article 4 of this Agreement is \$4,092,220.

Annex B  
to  
Conditional Sale Agreement

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Average Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Place of Delivery and Estimated Time of Delivery</u>
100-ton Open Top Hopper Cars	NW Bills of Materials 622 and 630, general arrangement drawing J51780	The shops of Norfolk & Western Railway Company, Roanoke, Virginia	164	CR490876- CR491039	\$36,636	\$6,008,304	10/79 through 12/79 at Hagerstown, Maryland

[CS&M Ref. 2043-949]

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LEASE OF RAILROAD EQUIPMENT

Dated as of September 15, 1979

between

CONSOLIDATED RAIL CORPORATION

and

THE CONNECTICUT BANK AND TRUST COMPANY,

as Trustee Under a Trust Agreement

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\* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

LEASE OF RAILROAD EQUIPMENT dated as of September 15, 1979, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not individually but solely as Trustee (the "Lessor") under a Trust Agreement dated as of September 15, 1979 (the "Trust Agreement"), with BWL, INC. (the "Beneficiary").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Shenandoah-Virginia Corporation (the "Builder"), wherein the Builder has agreed to sell to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment");

WHEREAS the Builder under an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") is assigning its interests in the CSA to Mercantile-Safe Deposit and Trust Company, acting as Agent (hereinafter, together with its successors and assigns and the Investors, as hereinafter defined, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor, the Beneficiary, and the parties named in Schedule A thereto (said parties, together with their successors and assigns, being hereinafter called the "Investors");

WHEREAS the Lessee desires to lease such number of units of Equipment as are delivered and accepted and settled for under the CSA (the "Units") at the rentals and upon the terms and conditions hereinafter provided; and

WHEREAS the parties contemplate that the Lessor will assign, for security purposes, certain of its rights in this Lease to the Vendor by an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment"), and the Lessee will consent thereto by a Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter

mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or additional rent, or setoff against or recoupment or reduction of rent or additional rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease or the CSA, or against the Beneficiary, the Builder or the Vendor or otherwise. The Lessee's obligations hereunder, including its obligations to pay all rentals, additional rentals and other amounts hereunder, shall be absolute and unconditional under any and all circumstances, and, except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor

hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Lessor, whereupon, except as provided in the last sentence of this Section, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The Lessee shall evidence its acceptance on behalf of the Lessor by executing and delivering to the Lessor a certificate of acceptance (the "Certificate of Acceptance") substantially in the form annexed hereto as Schedule C. The delivery, inspection and acceptance hereunder of any Unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such Unit to this Lease or to constitute acceptance thereof on behalf of the Lessor for any purpose whatsoever.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit, one interim and 64 consecutive quarterly payments in arrears. The interim payment is payable on January 15, 1980 (such date being hereinafter called the "Basic Rent Commencement Date"). The 64 quarterly payments are payable on January 15, April 15, July 15 and October 15 in each year, commencing April 15, 1980, to and including January 15, 1996 (or if any such date is not a business day, on the next preceding business day) (each of such 64 consecutive quarterly dates being hereinafter called a "Rental Payment Date"). The rental payable on the Basic Rent Commencement Date for each Unit shall be in an amount equal to the product of (a) the number of calendar days elapsed from and including the Closing Date for such Unit to, but not including, the Basic Rent Commencement Date, times (b) .030137% of the Purchase Price of such Unit. The 64 quarterly rental payments shall each be in an amount equal to the Quarter-Annual Lease Factor (as hereinafter defined) of the Purchase Price of each Unit then subject to this Lease. As used herein, the term "Quarter-Annual Lease Factor" means 2.3596% or such percentage as it may be adjusted pursuant to the next succeeding sentence, the second succeeding paragraph or § 16 hereof. If the Lessor shall provide more or less than 32.36% of the Purchase Price of the Units out of funds provided by the Beneficiary pursuant to Section 1.03 of the Trust Agreement,

or if 100% of the deliveries of the Units shall not occur in November 1979, the Lessee agrees that the rentals payable hereunder and the Casualty Values set forth in Schedule B hereto will be appropriately adjusted so as to preserve the Beneficiary's pretax economic and book yield and annual after-tax cash flows (Net Return).

In addition to the foregoing rentals, the Lessee agrees to pay to the Lessor as additional rentals amounts which, after deduction of any taxes payable by the Beneficiary or the Lessor in respect of such amounts, will be equal to (i) the amounts (after taking into account any net tax benefit realized by the Beneficiary in connection therewith in the same period in which such amounts are paid or accrued) required by the Lessor to make the payments provided for (a) in the third from last sentence of the third paragraph of Paragraph 2 of the Participation Agreement and (b) in Paragraph 9 of the Participation Agreement, on the dates the Lessor is required to make such payments (without regard to any limitation of the obligation of the Lessor set forth therein) and the Lessor agrees to apply such rentals for such purposes and (ii) if the Beneficiary shall fail to realize any net tax benefit taken into account in determining amounts payable by the Lessee pursuant to this paragraph, the amount of such net tax benefits so lost.

If the Beneficiary shall be obligated under Paragraph 12 of the Participation Agreement to pay Transaction Expenses (as therein defined) in excess of 1% of the aggregate Purchase Price of the Equipment, the Lessor and the Lessee agree that the rentals payable hereunder and the Casualty Values set forth in Schedule B hereto will be appropriately adjusted in order that the Beneficiary's Net Return (computed on the same assumptions, including, without limitation, tax rates, as were utilized by the Beneficiary in originally evaluating this transaction) will not be increased or decreased by reason thereof.

Notwithstanding anything to the contrary set forth herein, no adjustments of the rentals or the Casualty Values provided for herein shall reduce the amounts thereof below those which are necessary to satisfy the obligations of the Lessor under the CSA or below that required by Rev. Proc. 75-21 and FASB Statement No. 13. A schedule of such

revised rentals will be provided to the Lessee and the Lessor promptly after the computation thereof.

If any of the Rental Payment Dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next preceding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, or Hartford, Connecticut, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, but excluding all payments not assigned to the Vendor pursuant to the Lease Assignment, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 a.m., Baltimore time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9, 14 and 16 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or

rescind its termination), all as provided therein; provided, however, that, so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 12 hereof.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Vendor and the Lessor, in order to protect the Lessor's and the Vendor's security title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, that such filing and deposit will protect the Vendor's and the Lessor's rights in such Units and that no other filing, deposit or giving of notice with or to any Federal, state or local government or agency thereof is necessary to protect the rights of the Vendor and the Lessor in such Units.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

§ 6. Taxes. The Lessee assumes responsibility for, and agrees to pay, hold harmless and indemnify on an after-tax basis the Lessor (both in its individual and trust capacity), the Vendor, the Builder (which is hereby constituted a third party beneficiary hereof) and the Beneficiary and their successors and assigns (the "Indemnified Persons") against, all taxes, fees, withholdings, levies, imposts, duties, license and registration fees and other governmental charges of any nature whatsoever (either domestic or foreign), including, without limitation, penalties, additions to tax and interest (all such taxes, fees, withholdings, levies, imposts, duties, license and registration fees, other governmental charges, penalties, additions to tax and interest being hereinafter called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or the Units or any thereof on account of, or with respect to, this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acquisition, acceptance or rejection of the Units or any thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, operation, maintenance, repair, condition, sale, return, abandonment or other application or disposition of the Units or any thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for (i) any Taxes imposed on or measured by any fees or compensation received by the persons who are the Lessor or the Vendor, and (ii) Federal income Taxes and income or franchise Taxes imposed on the Beneficiary or an Investor or their successors and assigns by any jurisdiction in which the Beneficiary, such Investor or their successors and assigns has an office, except to the extent that indemnification is provided for in § 16 hereof. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within 10 days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that if any Taxes are being contested in accordance with § 16 hereof, any payment shall be made at the time therein provided.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any corresponding provision of the CSA (other

than the proviso to the third paragraph of Article 12 thereof) not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in the Units; provided, however, that the Lessor shall, with respect to any state or political subdivision thereof of the United States of America, file such returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by the Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, as the Lessee shall determine are required to be filed, and as shall be prepared by the Lessee, and the Lessor shall remit the amount thereof upon payment by the Lessee to the Lessor (such payment to be made forthwith upon demand by the Lessor therefor) of such taxes, fees and charges except as provided above. To the extent that the Lessor has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor and the Beneficiary harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor, of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The Lessee agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified

Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder. Without limiting the foregoing, the amount which the Lessee shall be required to pay with respect to any Taxes subject to indemnification under this § 6 shall be an amount sufficient so that, after considering the tax and other effects of the Taxes in question and the receipt of indemnification payments hereunder, the Indemnified Person will have the same anticipated after-tax rate of return on equity and periodic recovery of net cash flow as such Indemnified Person would have realized had such Taxes not been incurred or imposed.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Taxes pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such Taxes are paid or reimbursed by the Lessee.

§ 7. Maintenance; Casualty Occurrences; Insurance. The Lessee at its own expense will maintain and service each Unit and comply with a preventive maintenance schedule, if any, consistent with the Builder's preventive maintenance schedules and which will include testing, repair and overhaul of each Unit so that each Unit will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations and eligible for railroad interchange in accordance with the rules of the American Association of Railroads, and (c) desirable to and suitable for immediate purchase or lease and use by a Class I line-haul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings) in the event of resale or re-lease upon an Event of Default hereunder. In no event shall any Unit be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by the Lessee for similar equipment.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, permanently returned to the

Builder pursuant to any patent indemnity provision of the CSA, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease (or, if such taking, requisition or condemnation shall occur during a renewal term, for a period which shall exceed the then remaining renewal term), or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor, the Beneficiary and the Vendor with respect thereto. On the date for the payment of rent hereunder next succeeding such notice (the "Casualty Payment Date") the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit then due and payable plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of such Casualty Payment Date in accordance with Schedule B hereto referred to below. Upon the making of such rental and Casualty Value payments by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee shall notify the Lessor prior to any such sale. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall have no interest in the proceeds of insurance on the Units paid for by the Lessor or in any other payments in respect of Units suffering a Casualty Occurrence made by any person in excess of the Casualty Value of such Units. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provision of the CSA an amount equal to any net patent indemnity payment in respect of such Unit made by the Builder to the Vendor under

the CSA. The Lessee will pay all costs and expenses in connection with the sale of any Unit pursuant to a Casualty Occurrence.

The Casualty Value of each Unit as of any Casualty Payment Date shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to § 3 hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly (as provided above) and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 25% of the Purchase Price of such Unit; provided, however, that if the term of this Lease shall have been extended pursuant to § 13 hereof, then the applicable Casualty Value shall be the fair market value of such Unit, as of the rental payment date on or next preceding the date of such Casualty Occurrence, determined as provided in the following sentence. For the purposes of the preceding sentence, the term "fair market value" of a Unit shall, at the beginning of any five-year renewal term, be equal to the Fair Market Purchase Price of such Unit at such time determined in accordance with the provisions of § 13 hereof and shall decline or increase on a straight-line basis (computed on the basis of a 360-day year of 12 30-day months) to the estimated Fair Market Purchase Price of such Unit at the end of such renewal term determined in accordance with the provisions of § 13 hereof. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit or return to the Builder of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee shall notify the Lessor prior to any such sale. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government or by any other government or governmental entity (hereinafter collectively called the "Government") of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations (including without limitation the obligation to pay rent) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Units to the Lessor (including during storage periods), at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard for major Class I line-haul rail-

roads. If the Casualty Value of all the Units at any given time is less than what the deductible would be under the foregoing standard, then no casualty insurance need be carried. All policies with respect to such insurance shall name the Lessor (both in its individual and trust capacity), the Beneficiary and the Vendor as additional named insureds or loss payees, as their interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor, the Beneficiary and the Vendor in the event of cancelation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor, the Beneficiary, and the Vendor in any such event), shall include waivers by the insurer of all claims for premiums against the Lessor, the Beneficiary and the Vendor and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the Lessee, the Lessor, the Beneficiary or the Vendor, more hazardous use or occupation of the Units than that permitted by such policies, any breach or violation by the Lessee, the Lessor, the Beneficiary or the Vendor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units, or any change in the title to or ownership of any of the Units. Each such insurance policy shall expressly provide that all the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor, the Beneficiary or the Vendor. The Lessee shall, not later than June 15 of each year, commencing June 15, 1980, furnish to the Lessor and the Vendor a certificate of an independent insurance broker or company acceptable to the Lessor and the Vendor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal 10 days prior to the expiration date of such policy or policies. If the Lessor shall receive any insurance proceeds (other than proceeds of insurance paid for by the Lessor) or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Lessee up to an

amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds (other than proceeds of insurance paid for by the Lessor) received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of the first paragraph of this § 7, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

§ 8. Reports. On or before April 30 in each year, commencing with the calendar year 1980, the Lessee will furnish to the Lessor and the Vendor a certificate signed by the Chief Mechanical Officer of the Lessee or such other qualified engineer satisfactory to the Lessor and the Vendor, (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request (including a description and the cost of all additions, modifications or improvements made to the Units in the preceding year), (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced, (c) setting forth the identification numbers of all Units which are then in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and certifying that all such Units are in such condition, and (d) setting forth the identification numbers of all Units which are not in such condition. No later than 60 days after the delivery of such annual certificate, the Lessee will furnish the Lessor with a supplemental certificate of the Chief Mechanical Officer of the Lessee or other qualified engineer satisfactory to the Lessor and the Vendor setting forth the identification number of each Unit that was not certified in the preceding annual certificate as being in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof, and, as to each such

Unit, (i) certifying that such Unit is in such condition as of the date of such supplemental certificate, or (ii) stating that such Unit is not in such condition. If such supplemental certificate shall not be delivered on or prior to the last date specified for such delivery in the preceding sentence (or within 10 days after written notice of such failure to deliver by the Lessor to the Lessee) or shall state that such Unit is not in the required condition, such Unit shall (upon written notice by the Lessor or the Vendor) be deemed to have suffered a Casualty Occurrence under § 7 hereof. The Lessor, at its sole expense, shall have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease but the Lessor shall have no obligation to do so.

The Lessee shall promptly notify the Lessor, the Beneficiary and the Vendor of any occurrence of an Event of Default or other event which after notice or lapse of time or both would become an Event of Default, specifying such Event of Default and all such events and the nature and status thereof.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR NEITHER MAKES, HAS MADE NOR SHALL BE DEEMED TO MAKE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A to the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or

any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, at all times to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units (such laws and rules being hereinafter called "Applicable Rules") and in the event that, prior to the expiration of this Lease or any renewal thereof, such Applicable Rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such Applicable Rules in any reasonable manner which does not, in the opinion of the Lessor, the Beneficiary or the Vendor, adversely affect the property or rights of the Lessor, the Beneficiary or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements

made by the Lessee under the preceding sentence shall be owned by the Lessee (or such other party as may have title thereto), except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions contained hereinabove or which are not removed by the Lessee prior to surrendering possession thereof pursuant to the provisions of § 11 or § 14 hereof, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the Applicable Rules shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor.

The Lessee shall pay, and shall protect, indemnify and hold the Lessor (both individually and in its trust capacity), the Beneficiary and the Vendor, and their respective successors, assigns, agents and servants (hereinafter called "Indemnified Persons"), harmless from and against any and all losses, injuries, causes of action, suits, penalties, interest, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the ordering, acquisition, manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, storage, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, operation, condition, use, replacement, adaptation, maintenance, possession, storage or return of the Units or

of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of or as the result of the entering into or the performance of the Lease Assignment, the CSA or the Participation Agreement, including, without limitation, any claim arising out of any of the Lessor's obligations under the Lease Assignment, the CSA or the Participation Agreement, except to the extent such claim arises from an act or omission of the Lessor not related to the transactions contemplated by this Lease and the Participation Agreement. The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to so do, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or

liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor, the Beneficiary and the Lessor (both individually and in its trust capacity), as third-party beneficiaries hereof, from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor, the Beneficiary and the Lessor because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder.

The Lessee shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all of the Units of equipment.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required filing date (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units, or the leasing thereof to the Lessee. In the event that the Lessor shall become obligated to make any payment to the Builder pursuant to Article 13 of the CSA not covered by the foregoing provisions of this § 9,

the Lessee shall pay such additional amounts to the Lessor as will enable the Lessor to fulfill its obligations pursuant to said Article 13.

None of the indemnities in this § 9 shall be deemed to create any rights of subrogation, from or under any Indemnified Person, in any insurer or third party against the Lessee or the Lessor therefor, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in § 3, 7 or 13 hereof, and such default shall continue for five business days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof and the Lessee shall, for more than 30 days after demand in writing by the Lessor, fail to secure a reassignment or retransfer to the Lessee of such Lease, interest or right;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent or in the Participation Agreement, and such default shall continue for 30 days after the earlier of (i) written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any officer of the Lessee;

(D) a petition for reorganization under Title 11 of the United States Code (as now or hereafter constituted) shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing,

pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

(E) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the property of the Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the

use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor, in its sole discretion, shall specify:

(x) a sum, with respect to each Unit, equal to (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated plus (B) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor, be equal to all or such portion of the investment tax credit (referred to in § 16 hereof) lost, not claimed, not available for claim, disallowed or

recaptured by or from the Lessor as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the deductions in respect of depreciation and interest (referred to in § 16 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Rental Payment Date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing

remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessee hereby waives any and all claims against the Lessor and the Vendor and their agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner.

No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof. For the purpose of delivering possession, the Lessee shall:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any rolling stock to which any Units have been interchanged to return such rolling stock so interchanged) place such Units upon such storage tracks or other premises of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks or other premises at the risk of the Lessee without charge for insurance (which shall conform to the provisions of § 7 hereof), rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 1/90 of the next preceding rental payment applicable to such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

Without in any way limiting the foregoing obligations of the Lessee under this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without

the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.

So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and, without the prior written consent of the Lessor and the Vendor, the Lessee may sublease (which sublease shall be subject to the rights and remedies of the Lessor and the Vendor hereunder) the Units to, or permit their use by, a user incorporated in the United States of America (or any state thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any state thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in-through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Vendor's and the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term longer than six months or is renewable for a term more than six months; provided further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America except that occasional service in Canada shall be permitted so long as such service in Canada is de minimis and does not involve regular operation and maintenance outside the United States of America; and provided further, however, that any such sublease or use shall be consistent with the provisions of § 16 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or

other encumbrance (other than an encumbrance created by the Lessor, the Beneficiary or the Vendor or resulting from claims against the Lessor, the Beneficiary or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

§ 13. Renewal and Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than seven months prior to the end of the original term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all but not fewer than all the Units then covered by this Lease, for 1 or 2 additional 5-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond a date 26 years after the Basic Rent Commencement Date, at a Fair Market Rental (as defined below) payable in quarterly payments in arrears, commencing 3 months after the next preceding rental payment date, in each year of such extended term.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder; and provided further that the Lessee has not notified the Lessor of its intention to extend the term of this Lease as described in the first paragraph of this § 13, in the event the Lessor elects to sell any Units to third parties at the expiration of the original term of this Lease, the Lessee shall be given written notice of such intention to sell such Units prior to the expiration of such original term. In the event that the Lessor shall receive, prior to removal of such Units from the tracks of the Lessee at the end of such original term of the Lease and within 90 days after the expiration of the original term of this Lease, a bona fide offer in writing from another party unrelated to the Lessee to purchase such Units and the Lessor elects to sell such Units pursuant to such offer at the expiration of the original term of this Lease, the Lessor shall give written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party to the Lessor. The Lessee shall have the right and option, exercisable as provided in the next succeeding sentence of this paragraph,

to purchase such Units at the price at which such Units are proposed to be sold to the other party payable in accordance with the terms and conditions of payment offered by the other party. Within 10 business days of receipt of notice from the Lessor, the Lessee may exercise such purchase right by delivery to the Lessor of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Lessor, or (ii) 90 days after the expiration of the original term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase such Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Lessor until the date of such purchase.

The Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the cash rental for a five-year period or the purchase price (as of such date as the context herein requires), as the case may be, which would obtain in an arm's-length transaction between an informed and willing lessee or purchaser and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or purchase price and assuming that the Units have been collected in one place on the lines of the Lessee as directed by the Lessor. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Purchase Price of the Units, such rental or purchase price shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental or purchase price by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is

appointed within 35 business days after such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental (and, in the case of any renewal term, the Fair Market Purchase Price at the beginning and end of such renewal term) of the Units then subject to this Lease or any extended term thereof, within 70 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Purchase Price, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental or Fair Market Purchase Price, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Purchase Price, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. Such appraisal procedure expenses shall be borne equally by the Lessee and Lessor.

Upon payment of the purchase price of any Unit, pursuant to an election by the Lessee to purchase the Units, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. Return of Units upon Expiration of Term.

The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or any extended

term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks or other premises of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks or other premises for a period not exceeding 90 days following notification to the Lessor by the Lessee that all the Units have been assembled and delivered for storage and transport the same, at any time within such 90-day period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee (including the insurance required by § 7 hereof); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in § 7 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection. Each Unit returned to the Lessor pursuant to this § 14 shall be in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own expense, maintain and keep the Units in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. The Lessee shall pay to the Lessor for each day from the date of such expiration until the earlier of the date such Unit is returned or the 90th day after such expiration, an amount equal to 1/90 of the next preceding rental payment applicable to such Unit. In the event any Unit is not assembled, delivered and stored, as hereinabove provided,

within 90 days after such expiration, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the greater of (x) 1/90 of the next preceding rental payment applicable to such Unit or (y) the per diem charge with respect to such Unit or any equivalent charge then in effect, whether or not earned.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed in accordance with 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignments thereof to the Vendor. The Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor; provided, however, that no such opinion of counsel need be furnished in respect of the filing of the CSA or the assignment thereof in Canada. The filings with the Interstate Commerce Commission and the Registrar General of Canada described in the first sentence of this § 15 shall be made prior to the delivery and acceptance hereunder of any Unit.

§ 16. Indemnity for Federal and Other Income Tax Benefits. (a) Intended Tax Benefits. It is agreed by the Lessee and the Beneficiary (referred to in this § 16 as the "Owner") that they have assumed in their negotiations and in entering into this Lease, the other Documents (as defined in the Participation Agreement) and the transactions contemplated thereby, that, for purposes of the Internal Revenue Code of 1954, as amended and as it may hereafter be amended (the "Code"), and of all Illinois state and local tax laws based on or measured by the income of the Owner (such Federal and Illinois tax laws being referred to herein as

"Income Tax Laws"), such transactions will result in making available to the Owner from and after the date of delivery and acceptance of each Unit on behalf of the Lessor (the "Delivery Date") such deductions, credits and other benefits in respect of such Unit as are provided to an owner of property (herein referred to as the "Tax Benefits"), including, without limitation, the following:

(1) The trust created by the Trust Agreement (the "Trust") will be treated as a grantor trust under Subpart E, Part 1, of Subchapter J of the Internal Revenue Code of 1954, as amended (the "Code"). The Owner shall be treated as the owner of the entire Trust and shall take into account on its Federal and Illinois tax returns all items of income, gain, loss, deduction or credit to which the Owner would have been entitled with respect to the transactions had the Trust not been in existence. The Trust shall not be treated as a separate entity for purposes of all Income Tax Laws.

(2) The Owner will be treated as the purchaser, owner and original user of each Unit.

(3) This Lease will constitute a lease, under which the Owner will be the lessor and the Lessee will be the lessee.

(4) Each Unit will qualify in respect of the Owner as "new section 38 property" and as property the "original use" of which commences with the Owner, within the meaning of Sections 48(b) and 167(c)(2) of the Code.

(5) For purposes of determining the investment tax credit and depreciation deductions allowable to the Owner in respect of each Unit, the Owner's basis for each Unit (determined without regard to any increase in basis as a result of expenditures not reflected in the Purchase Price therefor) shall equal the Purchase Price therefor.

(6) For purposes of the Code, the Owner will be entitled to a full 10% investment tax credit in respect of each Unit for its taxable year ending December 31, 1979, based on the basis thereof specified in Section 16(a)(5).

(7) The Owner will, upon a timely election, be entitled to use the Class Life Asset Depreciation Range

System prescribed by Section 167(m) of the Code and Treas. Reg. § 1.167(a)-11 in computing deductions for depreciation in respect of each Unit, in consequence of which:

(i) the Owner may use in respect thereof any accelerated method of depreciation described in Section 167(b)(2) or (3);

(ii) if the Owner elects to depreciate each Unit under the double-declining method of depreciation, it may switch from such method to the sum of the years-digits method of depreciation, and if it is utilizing either the double declining balance method or the sum of the years-digits method, it may switch to the straight line method, all without the consent of the Commissioner of Internal Revenue;

(iii) it may depreciate each Unit on the basis of a depreciable useful life of 12 years, determined under Section 167(m) of the Code and the applicable rules and regulations thereunder;

(iv) it may depreciate each Unit by taking six full months of depreciation for the calendar year 1979, provided the half year convention described in Treas. Reg. § 1.167(a)-11(c)(2)(iii) is elected;

(v) it may depreciate each Unit without taking salvage value into account, but without depreciating below the salvage value thereof except to the extent provided in Section 167(f) of the Code and Treas. Reg. § 1.167(a)-11(d); and

(vi) provided the Lessor makes a timely application of the reduction in salvage value provided by Treas. Reg. §§ 1.167(a)-11(d)(1)(ii) and 1.167(f)-1(a), the Owner, in computing its depreciation deductions, will be able to depreciate each Unit to a salvage value of 0% of the basis of such Unit.

(8) For purposes of all Income Tax Laws other than the Code, the Owner will be entitled to depreciation deductions in respect of each Unit on the basis of the same assumptions and benefits set forth above in respect of the Code (including any assumptions and benefits available under the Class Life Asset Depreciation Range System and other elections available under the Code).

(9) The Owner will be entitled to a deduction for interest payable on the CSA Indebtedness at the time paid or accrued pursuant to the terms of such CSA Indebtedness, in accordance with the Owner's method of accounting.

(10) The Owner will be entitled to a deduction for all amounts paid or accrued, in accordance with its method of accounting, as fees to the Lessor (in its individual capacity) and the Vendor.

(11) The Owner will realize only income, expense, loss or other deduction solely from sources within the United States from or in connection with the ownership, use, lease and disposition of each Unit, and no portion of such income, expense, loss or other deduction will be from sources without the United States.

(12) No portion of the investment tax credit in respect of any Unit will be recaptured at any time, and no sale or other disposition of any Unit will occur prior to the expiration of the original term of this Lease (the "Basic Term") and, if elected, all renewal terms thereof (the Basic Term and all such renewal terms hereinafter referred to as the "Term").

(13) The Owner shall be entitled to depreciate or amortize a pro rata portion of the Transaction Expenses (as that term is defined in the Participation Agreement) and the fee payable by it to any broker or investment banker who rendered services to the Owner in connection with the transaction contemplated hereby no less rapidly than ratably over the Basic Term of this Lease in respect of each Unit.

(14) The Owner will be entitled to use the preceding tax benefits based on a 46% tax rate under the Code and an aggregate 4% tax rate under other Income Tax Laws determined without taking into account any tax benefits thereby derived under the Code (the "Tax Rates").

(15) For purposes of all the Income Tax Laws, the Owner will not be required to include any amount in its gross income with respect to any Unit or any of the transactions contemplated or referred to in the Lease or the other Documents, under any circumstance or for any reason other than (x) the rentals and additional rentals

specified in § 3 hereof and renewal rentals specified in § 13 hereof, (y) any indemnity pursuant to this § 16 (other than paragraph (e)(3) hereof), or (z) payments specified in § 7 (relating to Events of Loss) and §§ 10 and 11 (relating to remedies upon the occurrence of Events of Default), and none of the foregoing contemplated amounts shall be required to be included in the Owner's gross income prior to the time such amounts are (i) received or accrued by the Owner, depending upon the Owner's method of accounting, with respect to said rentals, or (ii) actually received by the Owner with respect to indemnity payments pursuant to this § 16 and payments pursuant to § 7 and §§ 10 and 11 referred to above.

(16) For purposes of the Income Tax Laws, the Owner will not be required to include in its gross income the cost or fair market value of any Nonseverable Improvement (as defined in Rev. Proc. 79-48) to any Unit made during the Term, prior to the expiration of the applicable Term.

(b) Certain Representations and Agreements.

(1) The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time during the Term of the Lease take any action or fail to take any action or file any returns, certificates or other documents inconsistent with the foregoing contemplated Tax Benefits of the Owner, and that each of such corporations will file such returns, take such action and execute such documents, and keep and make available for inspection and copying by the Lessor such records (other than the Lessee's corporate income tax returns), as may be reasonable and necessary to facilitate accomplishment of the intent hereof. Lessee further agrees to place in service and actual use each Unit on or before December 31, 1979.

(2) The Lessee represents and warrants that each Unit has a reasonably estimated economic useful life of at least 21 years from the applicable Delivery Date, that each Unit has a reasonably estimated fair market value as of the expiration of the applicable Basic Term of at least 20% of the sum of the Purchase Price thereof and a pro rata portion of the Transaction Expenses which are fairly attributable to the Purchase Price thereof without including in such value

any increase or decrease for inflation or deflation during the Basic Term therefor and after subtracting from such value any cost to the Lessor for removal and delivery of possession of the Unit to the Lessor at the end of said term of the Lease, and that each of the Units, both separately and collectively, will have a commercially feasible use to the Owner and other potential users at the end of the Basic Term therefor, and does not constitute limited use property, within the meaning of Rev. Proc. 76-30.

(3) The Lessee represents and warrants that (i) a portion of the Equipment constitutes property, the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) on the applicable Delivery Date each Unit in its entirety will qualify in respect of the Owner as "new section 38 property" and as property the "original use" of which commences with the Owner, within the meaning of Sections 48(b) and 167(c)(2) of the Code (and of corresponding or similar provisions of other Income Tax Laws); (iii) on the applicable Delivery Date and at all times thereafter during the Term therefor, each Unit will qualify in respect of the Owner as "section 38 property" within the meaning of Section 48(a) of the Code; (iv) each Unit will qualify in respect of the Owner as an asset described in Asset Guidelines Class No. 00.25, contained in Rev. Proc. 77-10; (v) on the applicable Delivery Date and at all times thereafter during the Term, no depreciation or other tax benefits associated with the ownership of property will have been claimed by any person other than the Owner with respect to any Unit; and (vi) the Lessee will not claim that it is the owner of any Unit at any time prior to any purchase of such Unit by the Lessee pursuant to the exercise by the Lessee of any option or right granted to the Lessee under this Lease or otherwise.

(4) The Lessee represents and warrants that as of the commencement of the Term with respect to any Unit, no Nonseverable Improvement is required in order to complete any such Unit for its intended use by the Lessee.

(5) The Lessee represents and warrants that it is not presently, and will not become during the Term, an organization of the type described in either Section 48(a)(4) or 48(a)(5) of the Code.

(c) Indemnification.

(1) If the Owner for any taxable year shall be denied or unable to claim or otherwise shall fail to realize or shall lose due to recapture or otherwise all or any portion of the Tax Benefits with respect to all or part of any Unit (any such failure, loss or other event being herein referred to as a "Loss") due in whole or in part (as determined by the Internal Revenue Service, the applicable state or local agency, the Owner if the Loss results from an event described in (i) below, or by a court of competent jurisdiction) to any of the following in respect of such Unit (singly or in combination):

(i) the sale or other disposition of any Unit or portion thereof or the (beneficial) interest of the Lessor or Owner therein after the occurrence of an Event of Default;

(ii) provided the Owner is treated as the owner of such Unit under the Code, the failure of such Unit to qualify in respect of the Owner as "new section 38 property" and as property whose "original use" commences with the Owner, within the meaning of Sections 48(b) and 167(c)(2) of the Code (or corresponding or similar provisions under other Income Tax Laws) based on a basis for purposes of the investment tax credit and depreciation as specified in § 16(a)(5) hereof;

(iii) provided the Owner is treated as the owner of such Unit under the Code, the failure of such Unit on the Delivery Date therefor and at all times during the applicable Term to qualify in respect of the Owner as "section 38 property" within the meaning of Section 48(a) of the Code as a result of the application (including pursuant to a recapture determination) of Section 48(a)(2) (relating to use predominantly outside the United States), or Section 48(a)(4) (relating to, inter alia, use by a tax exempt organization) or Section 48(a)(5) (relating to use, inter alia, by governmental units or instrumentalities) of the Code;

(iv) the enactment or adoption of any amendment to any Income Tax Law or the regulations promulgated thereunder which reduces (including through a series of reductions) for any period or periods the highest effective tax rates below the Tax Rates (as defined in

Subdivision (a)(14) hereof), or otherwise adversely affects the enjoyment of the Tax Benefits; provided that if such enactment or adoption occurs after the Delivery Date for the applicable Unit, only those amendments thereby made shall be included in this clause (iv) in respect of such Unit which are first effective for any taxable year of the Owner beginning on or before the Delivery Date for such Unit; and provided further that if an enactment or adoption described in the preceding proviso provides for a series of changes in tax rates, all such tax rate changes shall be includible in this clause (iv) (notwithstanding any deferred effective date) so long as any one of such changes in tax rate is includible in this clause (iv);

(v) the asserted or actual incorrectness, inaccuracy or breach of any representation, warranty, agreement, covenant, statement, conclusion or opinion made, furnished or rendered by or on behalf of the Lessee pursuant to or forming part of this Lease (including, without limitation, all those made in Subdivision (b) of this § 16), and any other documents entered into by the Lessee in connection with the transactions contemplated hereby;

(vi) an act or omission of Lessee (or any sublessee or user during the Term of this Lease and storage period), whether required or permitted or waived under the Documents or otherwise, including, without limitation, as an act or omission of the Lessee any advances or payments by the Lessee and the Lessee's failure for any reason whatsoever to comply with, fulfill or abide by any of its covenants, duties, undertakings or other obligations (including, without limitation, negative covenants or obligations) contained in the Documents;

(vii) the acts and omissions referred to in subparagraph (vi) hereof on the part of the Lessee and/or for which the Lessee is responsible under the Documents (or any sublessee or user during the Term of this Lease and storage period) shall be deemed to include, without limitation, any of the following events, arrangements or conditions in respect of any Unit, regardless of whether such event, arrangement or condition is permitted or required or consented to in the Documents, or is required by law or any administrative or other legal

proceeding: any repair, maintenance, addition, improvement, modification, alteration, replacement, retirement (whether ordinary or extraordinary), damage, destruction, use (including place of use), cessation of (or failure to) use, transfer of possession, sublease, assignment of lease, pooling or interconnection arrangement, substitution, disposition or other event or arrangement similar to any of the foregoing;

(viii) any payment, refund or credit arising from or in connection with the Documents or any transaction thereby contemplated (including any payment or credit by or to the Builder or other vendor made by or to the Lessee or any affiliate); or

(ix) an adjustment increasing the salvage value for any Unit;

then in any such case the Lessee shall, subject to Subdivisions (d) and (e) hereof, indemnify the Owner against such Loss by making payments in the amounts and at the times provided in subparagraphs (2) and (3) of this Subdivision (c).

(2) In the case of any Loss which is subject to indemnification under this Lease, the Lessee shall pay from time to time to the Owner an amount or amounts which, after deduction of all taxes, fees and other charges and impositions required to be paid by the Owner in respect of the receipt or accrual of such amount or amounts under the Income Tax Laws, shall be equal to the sum of (i) the aggregate amount of additional taxes payable under the Income Tax Laws from time to time as a result of such Loss, plus (ii) the aggregate amount of any interest, penalties, fines or additions to tax payable by the Owner under the Income Tax Laws from time to time as a result of such Loss.

(3) The Owner shall pay from time to time to the Lessee an amount or amounts equal to the sum of (x) the net reduction, if any, in taxes under the Income Tax Laws realized by Owner from time to time attributable to a tax benefit arising from any indemnification payment by Lessee or any matter indemnified against (whether such tax benefit shall be by means of a credit, depreciation or deduction), plus (y) the net amount of any additional net reduction in taxes realized by the Owner from time to time under the Income Tax Laws attributable to a tax benefit resulting from any payment pursuant to clause (x) and clause (y) of this sentence;

provided, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed the remainder of (i) the amount of all prior payments pursuant to subparagraph (2) by the Lessee to the Owner in respect of any Loss, minus (ii) the amount of all prior payments by the Owner to the Lessee pursuant to this subparagraph (3) arising from such Loss; and provided, further, that any loss of such tax benefits subsequent to the year of realization by the Owner shall be subject to full indemnification in accordance with the provisions of § 16(c)(2).

(4) Any amount payable to the Owner pursuant to subparagraph (2) hereof shall be paid not later than 30 days after receipt of a written demand therefor from the Owner (but such payment shall not be due prior to the earlier of payment by the Owner of any additional income tax (including payments of estimated tax) which becomes due as a result of such Loss) accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable. Any amount payable to the Lessee pursuant to subparagraph (2) hereof shall be paid not later than 30 days after the earlier of (i) the date the Owner realizes any such reduction in taxes (including reductions in estimated tax) or (ii) the date such reductions would have occurred under the assumptions set forth in subparagraph (5) hereof, and shall be accompanied in either case by a written statement describing in reasonable detail the computation of the amount so payable. The Owner may at its option offset amounts due and owing Lessee pursuant to subparagraph (3) hereof against amounts which it has certified are due and owing by Lessee to it pursuant to subparagraph (2) hereof. Anything to the contrary in this § 16 notwithstanding, the Owner shall not be required to make any payment to the Lessee under this § 16 if, at the time such payment is due, an Event of Default, or event which upon the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing.

(5) Whenever it may be necessary to determine the amount of a Loss and the amount of any payment required to be made under this Subdivision (c) by either the Owner or the Lessee, such determination and such computation shall be made on the assumptions (but without limiting the effect of § 16(d)(iii) in determining the occurrence of a Loss subject to indemnification) (a) that the Owner could have currently fully utilized the deduction, credit or other tax benefit or

attribute which is the basis of the Loss (other than an inclusion in gross income) at the "Tax Rates"; (b) that an inclusion in gross income of the Owner which constitutes a Loss, the receipt or accrual by the Owner of any indemnity payment and of any interest on any refund of income taxes, and realization by the Owner of any tax benefits arising from any Loss indemnified against or from any payment by the Owner or the Lessee pursuant to subparagraph (2) or (3) hereof will, as the case may be, be subject to or benefited by the then applicable tax rates under the Income Tax Laws, determined by treating such item of income, deduction or credit as the last (marginal) such item of the period in which it is included or deemed, under this § 16, to be used; (c) that for purposes of subparagraph (3) hereof, the Owner will realize any tax benefit (deduction, credit or other allowance) arising from any Loss indemnified against or from any payment made by the Owner to the Lessee only if, when and to the extent the Owner shall actually realize a reduction in tax under the Income Tax Laws which would have been then payable but for such tax benefit; and (d) that the effect of any Loss not subject to indemnification under this Lease (whether by reason of an Excluded Event, as defined in § 16(d) hereof, or otherwise) shall be disregarded in determining the occurrence of any Loss as a result of any other event and the amount payable in respect of such Loss.

If, in connection with any computation provided for in this Subdivision (c), the Owner shall, subsequent to the time of payment or refund to the Lessee, be able to utilize and actually utilize a smaller foreign tax credit carryback, investment tax credit carryback, loss carryback or any other tax carryback by reason of the utilization of deductions or tax credits referred to herein, the amount of such carryback which could have been carried back shall be treated as having been lost in such subsequent year and shall be subject to full indemnification by the Lessee in accordance with the provisions of § 16(c)(2).

If any income, expense, loss or other deduction with respect to any Unit in whole or in part shall not be treated as derived from, or allocated to, sources solely within the United States for Federal income tax purposes for a given taxable year of the Owner, the amount of such Loss (and the amount of additional taxes payable under all Income Tax Laws as a result thereof) shall be the foreign tax credits the Owner would have been able to utilize for such taxable year and succeeding taxable years if the source

of such income, expense, loss or other deduction had instead been treated as solely within the United States. The Lessee will maintain sufficient records to verify its use of the Equipment outside of the United States, which use shall be de minimis, and the Lessee shall furnish such records to the Owner for Federal income tax audit purposes upon receipt of 30 days' written notice.

In determining the order in which the Owner utilizes foreign taxes as a credit against the Owner's Federal income taxes, the Owner shall be deemed to utilize first all foreign taxes other than those paid by the Lessee on behalf of the Owner or indemnified against by the Lessee.

The failure of the Owner to realize any tax benefit taken into account in determining any amount payable by the Owner to the Lessee pursuant to § 16(c)(3) or in applying § 16(g) (relating to an adjustment of Casualty Values) shall be subject to full indemnification by the Lessee in accordance with the provisions of § 16(c)(2).

(d) Excluded Events. Anything in Subdivision (c) to the contrary notwithstanding (but without limiting the generality thereof in respect of any limitations of liability of the Lessee), the Lessee shall not be required to indemnify the Owner in respect of any given Loss with respect to a Unit if and to the extent such Loss results from the occurrence of any of the following events in respect of such Unit (herein referred to as "Excluded Events"):

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid in full the amounts stipulated under § 7 of this Lease, as the same may be revised pursuant to § 16(g);

(ii) a voluntary transfer or voluntary disposition (whether prior to, during or after the Term of the Lease) of such Unit or of the interest of the Owner therein or the rentals in respect thereof under the Lease, or any transfer or disposition of such Unit or of the interest of the Owner therein or the rentals in respect thereof under the Lease, whether voluntary or involuntary, which results from bankruptcy or other proceedings for the relief of debtors in which the Owner is the debtor, unless, in each case, such transfer or disposition is made as a direct result of an Event of Default which has occurred and is continuing;

(iii) the failure of the Owner to have sufficient taxable income or sufficient liability for tax against which to apply such Tax Benefit (but the exclusion provided in this paragraph (iii) shall not apply to any unused foreign tax credit resulting from the Loss specified in § 16(a)(11));

(iv) the failure of the Owner to timely claim such Tax Benefit in its income tax return for the appropriate year or to follow the proper procedure in claiming such Tax Benefit in such tax return for such year, unless (i) in the opinion of the Owner (supported by the advice of tax counsel) there is no reasonable basis for such claim or treatment, or (ii) the matter in question is of a continuing nature and such matter (although not in respect of the particular taxable period) has previously been decided pursuant to the contest provisions hereof (other than by reason of a decision of the Owner not to contest such Loss for any given period) or the Lessee has failed to request that such matter (in respect of a prior taxable period) be contested, or (iii) if such failure to claim such Tax Benefit or follow such procedure shall not preclude the Owner from claiming such Tax Benefit, or (iv) such Loss arises as a result of a Nonseverable Improvement (as defined in Subdivision (f) hereof); or

(v) any amendment to any Income Tax Law or the regulations promulgated thereunder enacted after the Delivery Date for such Unit and which is first effective for taxable periods beginning after such Delivery Date, other than any enactment or adoption respecting the matters referred to in either § 16(c)(1)(iii) or § 16(c)(1)(iv).

(e) Contesting of Denials. If at the conclusion of an audit the Owner receives a preliminary or "30-day-letter" from the Internal Revenue Service (or a corresponding written claim from the applicable state or local taxing authority) proposing that a Tax Benefit should be denied or disallowed or recaptured, in whole or in part, the Owner agrees, except as hereinafter provided, upon request and at the expense of the Lessee, in good faith to contest such claim, provided that:

(1) Within 30 days after written notice by the Owner to the Lessee of such claim, the Lessee shall

make a written request that such claim be contested and shall furnish the Owner with a written opinion of its independent tax counsel, satisfactory to the Owner as to the identity of such counsel and the substance of the opinion rendered, to the effect that a reasonable basis exists for resisting such claim and describing such basis.

(2) The Owner, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service (or other taxing authority) in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate court as the Owner may elect, or contest such claim in the Tax Court of the United States or other appropriate forum, considering, however, in good faith such request as the Lessee shall make as to the most appropriate forum in which to proceed to the extent not in conflict with the Owner's decisions with respect to claims not subject to indemnification by the Lessee under § 16(c).

(3) The Lessee shall have indemnified the Owner in a manner satisfactory to the Owner (including as to security for such indemnification) for any liability or loss which the Owner may incur as the result of contesting such claim, and shall have agreed to pay the Owner, on demand, all costs and expenses which the Owner may incur in connection with contesting such claim, including, without limitation, (i) reasonable attorneys' and accountants' fees and disbursements, (ii) the amount of any interest, additions to tax, fines and penalties (including any for or in respect of estimated taxes) which may ultimately be payable to any taxing authority as the result of contesting such claim, and (iii) in the event the Owner shall, in connection with any such claim, pay the tax claimed and then seek a refund, reimburse the Owner, on demand, an amount equal to the tax paid plus interest, additions to tax, fines and penalties (including any such item for estimated taxes) paid by the Owner, if any. Any income resulting to the Owner from the receipt or accrual of any amounts payable by the Lessee to or for the benefit of the Owner pursuant to this Subdivision (e) shall constitute a loss of the Tax Benefit specified in Subdivision (a)(15) hereof, which is subject to full indemnification by the Lessee in accordance with the provisions of § 16(c)(2).

The Owner shall have no obligation to consent to any matter if the matter is of a continuing nature and such matter (although not in respect of the particular taxable period) has previously been decided pursuant to the contest provisions of this Section (other than by reason of an election by the Owner not to contest such matter) or the Lessee has failed to request that such matter (in respect of a prior taxable period) be contested.

If any such claim referred to above shall be made by the Internal Revenue Service or other taxing authority and the Lessee duly shall have requested the Owner to contest such claim as above provided, the Lessee's liability under this § 16 with respect to the denial or disallowance or recapture of such Tax Benefit shall become fixed upon Final Determination, as defined below, of the Owner's liability for the tax claimed. In the event the Lessee does not request the Owner to contest such claim as provided in this Subdivision (e), the liability of the Lessee under this § 16 shall become fixed to the Owner at the time of the Final Determination in respect thereof. In the event any such claim is contested, the Owner shall prosecute such contest diligently and in good faith and shall, upon request, keep the Lessee informed of the status thereof. The Owner may elect not to contest any such claim in respect of any given taxable period despite the Lessee's requesting such contest in accordance with this Subdivision (e), or discontinue any such proceedings requested by the Lessee and previously commenced, and thereupon the Lessee shall be relieved of all liability to indemnify the Owner with respect to the Tax Benefits involved in respect to such claim, and the Owner shall reimburse the Lessee for all amounts paid by the Lessee under this Subdivision (e) in connection with such contesting; any such election by the Owner not to contest the claim for any given taxable period shall not affect the rights and obligations of the Owner and the Lessee under this Lease in respect of such Loss for any other taxable period.

In the event that the Owner has paid the tax claimed and received reimbursement therefor from the Lessee and the Lessee duly has requested the Owner to contest such claim, (a) if the Owner obtains a refund thereof from the government, such refund, together with any interest paid by the Government, shall be paid to the Lessee promptly after receipt thereof by the Owner; and (b) in the event of a Final Determination adverse to the Owner, such reimbursement of tax from the Lessee shall be applied against the amount of the indemnity due under Subdivision (c) hereof.

For purposes of this Lease, a "Final Determination" shall be deemed to occur with respect to a Loss when (1) there is a decision, judgment, decree or other order by any court of competent jurisdiction, which decision, judgment, decree or other order has become final, i.e., all allowable appeals requested by the Lessee pursuant to Subdivision (e) (other than an appeal or petition for certiorari to the Supreme Court of the United States unless such Owner shall elect to file such appeal or petition) have been exhausted by either party to the action, (2) there is a closing agreement made under Section 7121 of the Code (or any similar provision under other Income Tax Laws), (3) the time for instituting a claim for refund has expired, or if a claim was filed, the time for instituting suit with respect thereto has expired, or (4) the Lessee fails duly to notify the Owner in writing of the Lessee's intention to require the Owner to contest a proposed Loss, within 30 days of the giving of notice by Owner of such Loss.

(f) Agreement and Notification as to Lessee Improvements. The Lessee agrees that, within 30 days after the close of any calendar year (or in the event the Owner gives the Lessee written notice that the Owner's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made any Nonseverable Improvement to any Equipment, the Lessee will give written notice thereof to the Owner describing such improvement in reasonable detail and specifying the cost and fair market value thereof. The Lessee and the Owner hereby agree that the Owner shall take into its gross income as rent any Nonseverable Improvement required to be included in the gross income of the Owner for Federal or Illinois tax purposes. Any amount which is required to be included in the gross income of the Owner for Federal or Illinois tax purposes prior to the expiration of the Term as a result of a Nonseverable Improvement shall constitute a Loss of the Tax Benefit specified in Subdivision (a)(16), which is subject to full indemnification in accordance with § 16(c)(2). Any Nonseverable Improvement shall be deemed to be "required to be included in the gross income of the Lessor for Federal or Illinois tax purposes" if such inclusion is required by (i) any private ruling letter issued to the Owner by the Internal Revenue Service (or other taxing authority) which has not been revoked or otherwise rendered inapplicable at the time the cost of said Nonseverable Improvement is incurred and which pertains to equipment similar to the Equipment and alterations similar to the Nonseverable

Improvement the cost or fair market value of which is to be included in the gross income of the Owner; provided that upon request of the Lessee a copy of such private ruling letter shall be given to the Lessee; (ii) any provision of the Code or other Income Tax Law or the applicable regulations thereunder; (iii) any published Revenue Ruling or other pronouncement of the Internal Revenue Service (or other taxing authority) which has not been held invalid by a court having ultimate appellate jurisdiction over the Federal or Illinois tax liability of the Owner or in which the time for appeal has lapsed; (iv) any Final Determination; or (v) any determination by the Internal Revenue Service (or other taxing authority) which the Lessee has not requested the Owner to contest in accordance with the terms of Subdivision (e).

(g) Adjustment of Casualty Values. If any amount is required to be paid hereunder by the Lessee to the Owner and is actually so paid, the Owner shall, subject to the provisions of the last sentence of the first paragraph of § 3 hereof, appropriately adjust the Casualty Values with respect to the Unit in respect of which such amounts is required to be paid, to reflect the circumstances and consequences of such Loss, including the obligations of the Lessee and the Owner arising therefrom under this Agreement, in accordance with the manner in which such values were originally computed by the Owner, and shall certify to the Lessee the new values.

(h) Records. The Lessee covenants and agrees to maintain, or cause to be maintained, sufficient records to establish the physical location of each Unit during the Term and other information, all as the Owner shall reasonably request in order to make a determination both that each Unit is not being used "predominantly outside the United States" within the meaning of Section 48(a)(2) of the Code and as to the source of income and deductions attributable to such Unit. The Lessee shall make the records referred to in the preceding sentence available, or cause such records to be made available, for inspection by the Owner or its authorized agents, during normal business hours at its office upon request by five days' prior written notice from the Owner. The Lessee shall, at its expense, upon request by the Owner provide to such party a copy of such records which shall be certified to be a true copy by an affidavit attached thereto and executed by an officer of the corporation maintaining such records. Notwithstanding the preceding sentence, the

Owner or its authorized agents shall have the right to make copies and extracts of any such records at their own expense.

(i) Finality of Computation. All computations required to be made under this § 16 shall, at the expense of the Lessee, be made in the first instance by the Owner and if requested by the Lessee shall, at the Lessee's expense, be verified by independent public accountants selected by the Owner from the following, except that the Owner shall not select the independent public accountants who certified the most recent certified financial statement of the Owner: Arthur Andersen & Co., Arthur Young & Company; Coopers & Lybrand, Ernst & Ernst; Deloitte, Haskins & Sells; Peat, Marwick, Mitchell & Co.; Price Waterhouse & Co.; and Touche Ross & Co. Any such computation shall be final, binding and conclusive upon the Lessee and the Lessee shall have no right to inspect the books, records, tax returns or other documents of or relating to the Lessor.

(j) Consolidated Tax Returns. In the event the Owner is, or shall become, part of an affiliated or combined group of corporations which files a consolidated or combined return for purposes of any Income Tax Law, then for purposes of this § 16 the term "Owner" as used herein shall mean such Owner and such affiliated or combined group.

(k) Assignees. Notwithstanding anything to the contrary contained herein, all references to the Owner in this Agreement shall be deemed to refer to the Owner and any transferee of the Owner, except to the extent, if any, that the Tax Benefits are directly and adversely affected solely by such transfer (or any prior transfer).

(l) Survival of Indemnities. The representations, warranties, indemnities and agreements of the Lessee provided for in this Lease, and the Lessee's obligations under any and all thereof and the Lessor's indemnification under § 16(c)(3), shall survive the expiration or other termination of this Lease and the Trust Agreement, and shall be enforceable by the Owner directly against the Lessee.

(m) Effect of Other Indemnities. The Lessee's obligations under the indemnities provided for in this Lease shall be those of a primary obligor whether or not the person indemnified shall also be indemnified with respect to the same matter under the terms of the Lease or any other document or instrument, and the person seeking indemnification

from the Lessee pursuant to any provisions of this Lease may proceed directly against the Lessee without first seeking to enforce any other right of indemnification. Upon the payment in full by the Lessee of any indemnity provided for under this Lease, the Lessee shall be subrogated to any right of the person indemnified in respect of the matter as to which such indemnity was paid.

(n) Reference to Code. Reference in this § 16 to specific Sections of the Code shall be deemed to include corresponding or comparable sections or provisions of any successor laws.

(o) Ownership. It is hereby agreed between the Lessee, the Lessor and the Owner that for Federal income tax purposes the Owner will be the owner of the Units and the Lessee will be the lessee thereof, and that the Lessor will not elect to treat the Lessee as having acquired the Units pursuant to Section 48(d) of the Code.

§ 17. Interest on Overdue Rentals. Any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to 12%, or such lesser amount as may be legally enforceable. Interest hereunder shall be determined on the basis of a 360-day year of 12 30-day months.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department; and

(b) if to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Assistant Treasurer--Financing & Collections;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at P.O. Box 2258, Baltimore, Maryland 21203, Attention of

Corporate Trust Department, and to the Beneficiary at its address appearing in the Participation Agreement.

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement and the exhibits thereto, this Lease exclusively states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 20. Immunities; Satisfaction of Undertakings. Anything herein to the contrary notwithstanding, each and all of the representations, undertakings and agreements herein made on the part of the Lessor are made and intended not as personal representations, undertakings and agreements by The Connecticut Bank and Trust Company (including its successors and assigns) or for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or responsibility is assumed hereunder by or shall at any time be enforceable against the said bank or the Beneficiary (except as provided in the last paragraph of Article 12 of the CSA and in Section 1.03 and the last sentence of Section 3.04 of the Trust Agreement) on account of any representation, undertaking or agreement hereunder of the Lessor or the Beneficiary, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

§ 21. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to any additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

CONSOLIDATED RAIL CORPORATION,

by

[Corporate Seal]

\_\_\_\_\_  
Assistant Treasurer--  
Financing & Collections

Attest:

\_\_\_\_\_  
Assistant Secretary

THE CONNECTICUT BANK AND TRUST  
COMPANY, not individually but  
solely as Trustee,

by

[Corporate Seal]

\_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Authorized Officer



## SCHEDULE A

Specifications of the Equipment

<u>Type</u>	<u>Builder</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>
Open Top Hopper Cars	Shenandoah- Virginia Cor- poration	164	CR 490876- CR 491039

## SCHEDULE B TO LEASE

Casualty Values

<u>Rental Payment Date</u>	<u>Percentage</u>	<u>Rental Payment Date</u>	<u>Percentage</u>
January 15, 1980 (Interim Date)	103.4825%	April 15, 1988	70.7141%
April 15, 1980	104.1002	July 15, 1988	69.5575
July 15, 1980	104.6180	October 15, 1988	68.3698
October 15, 1980	105.0622	January 15, 1989	67.1474
January 15, 1981	105.4309	April 15, 1989	65.5539
April 15, 1981	105.7510	July 15, 1989	64.6020
July 15, 1981	105.9806	October 15, 1989	63.2761
October 15, 1981	106.1419	January 15, 1990	61.9135
January 15, 1982	106.2328	April 15, 1990	60.5131
April 15, 1982	106.2763	July 15, 1990	59.0739
July 15, 1982	106.2349	October 15, 1990	57.5948
October 15, 1982	106.1276	January 15, 1991	56.0748
January 15, 1983	105.9526	April 15, 1991	54.5126
April 15, 1983	99.2992	July 15, 1991	52.9525
July 15, 1983	98.9973	October 15, 1991	51.3884
October 15, 1983	98.6324	January 15, 1992	49.8202
January 15, 1984	98.2029	April 15, 1992	48.2348
April 15, 1984	97.7247	July 15, 1992	46.6705
July 15, 1984	97.1748	October 15, 1992	45.1117
October 15, 1984	96.5656	January 15, 1993	43.5586
January 15, 1985	95.8953	April 15, 1993	41.9953
April 15, 1985	88.7466	July 15, 1993	40.4616
July 15, 1985	87.9639	October 15, 1993	38.9403
October 15, 1985	87.1270	January 15, 1994	37.4318
January 15, 1986	86.2468	April 15, 1994	35.9185
April 15, 1986	85.3423	July 15, 1994	34.4449
July 15, 1986	84.4128	October 15, 1994	32.9922
October 15, 1986	83.4575	January 15, 1995	31.4930
January 15, 1987	82.4757	April 15, 1995	29.9258
April 15, 1987	75.0368	July 15, 1995	28.3324
July 15, 1987	74.0000	October 15, 1995	26.6909
October 15, 1987	72.9345	January 15, 1996	25.0000
January 15, 1988	71.8394		

## SCHEDULE C

Certificate of Acceptance

To: The Connecticut Bank and Trust Company, as  
Trustee (the "Trustee") under a Trust  
Agreement  
One Constitution Plaza  
Hartford, Connecticut 06115

Attention of Corporate Trust Department.

Shenandoah-Virginia Corporation  
8 North Jefferson Street  
Roanoke, Virginia 24042

I, the duly authorized representative for the Trustee and Consolidated Rail Corporation (the "Lessee") under the Conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of September 15, 1979, respectively, do hereby certify that I inspected, approved and accepted delivery thereunder on behalf of the Trustee, of the following Units of Equipment:

TYPE OF EQUIPMENT:           OPEN TOP HOPPER CARS  
DATE ACCEPTED:  
NUMBER OF UNITS:  
RAILROAD ROAD NUMBERS:

I do further certify that the foregoing Units are in good order and condition, and conform to the specifications and requirements applicable thereto as provided in Article 2 of the aforesaid Conditional Sale Agreement.

I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder named below for warranties it has made with respect to the Equipment.

\_\_\_\_\_  
Inspector and Authorized Representative  
of Trustee and Lessee

Builder:

Shenandoah-Virginia Corporation

[CS&M Ref.: 2043-949]

ASSIGNMENT OF LEASE AND AGREEMENT dated as of September 15, 1979 (this "Assignment"), between THE CONNECTICUT BANK AND TRUST COMPANY, not individually but solely as Trustee (the "Lessor") under a Trust Agreement dated as of September 15, 1979 (the "Trust Agreement"), with BWL, Inc. (the "Beneficiary"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (together with its successors and assigns, the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Shenandoah-Virginia Corporation (the "Builder"), providing for the sale to the Lessor of such units of railroad equipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Lessor thereunder;

WHEREAS the Lessor and Consolidated Rail Corporation (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") which provides for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor and the Investors (as defined in the Participation Agreement) for whom the Vendor is acting to invest in the CSA Indebtedness (as defined in the CSA), the Lessor has agreed to assign, for security purposes, certain of its rights in, to and under the Lease to the Vendor.

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor under the CSA, all the Lessor's rights, titles and interests,

powers, privileges, and other benefits in, to and under the Lease (including those inuring to the benefit of the Beneficiary, but not including those excepted below), including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable from the Lessee by the Lessor and the Beneficiary under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys, except as set forth below, being hereinafter called the "Payments"), and the right to make all waivers, modifications and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under or with respect to the Lease; provided, however, that the term "Payments" as used herein shall not be deemed to include, at any time either before or after an Event of Default under the Lease shall have occurred and be continuing, payments by the Lessee to the Beneficiary pursuant to § 6, 9 or 16 of the Lease or to the Vendee in its individual capacity. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor, or as attorney for the Lessor, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments first, to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default thereunder shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor by bank wire to the Lessor at its address specified in § 18 of the Lease or at such other address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Vendor shall promptly notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the CSA, except

that the Vendor may not declare an event of default under subparagraph (a) or (f) of Article 15 of the CSA arising solely by reason of the failure of the Lessee to make any rental payment which, pursuant to subparagraph (f) of Article 15 of the CSA, would not constitute an event of default thereunder if the Lessor complies with the provisions thereof, unless such event of default is not remedied within 10 business days after notification is given as aforesaid.

2. The assignment made by the Lessor hereunder is executed only as security and shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify, the liability of the Lessor under the Lease, it being agreed that, notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor. The Lessor shall appear in and defend every action in connection with its obligations or duties under the Lease at its sole cost.

3. The Lessor represents and warrants to the Vendor that the Lessor has not entered into any assignment of its interests in the Lease other than this Assignment, has not entered into any amendment of the Lease and has not created or suffered to exist with respect to the Lease or any of its interests therein any claim, lien or charge arising by, through or under the Lessor.

The Lessor agrees that it will from time to time and at all times, at the request of the Vendor execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions herein set forth and more perfectly to confirm the interests hereby assigned and transferred to the Vendor or intended so to be.

4. The Lessor will perform and discharge each and every obligation and agreement which the Lease provides is to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, forgive or in any manner release the Lessee of or from the obligations, conditions and agreements to be performed by the Lessee thereunder, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or

terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

5. The Lessor does hereby constitute the Vendor its true and lawful attorney, irrevocably, with full power (in the name of the Lessor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

6. Upon the full discharge and satisfaction of all sums due from the Lessor under the CSA, the Lessor's assignment hereunder of its rights in, to and under the Lease shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor. The Vendor, if so requested by the Lessor at that time, will execute, acknowledge and deliver an instrument releasing its entire estate, right, title and interest in the Lease and transferring such estate, right, title and interest to the Lessor and any and all further instruments required by law or reasonably requested by the Lessor in order to confirm or further assure the interest in the Lease which shall have reverted or been so transferred to the Lessor.

7. The Lessor will pay and discharge any and all taxes, claims, liens, charges or security interests (other than those created by the CSA) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the CSA or the Lease (but including income taxes arising out of the receipt of the rentals and other payments under the Lease and any other proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

8. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments reasonably requested by the Vendor in order to confirm the interest of the Vendor hereunder.

9. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. Any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

10. This Assignment shall be governed by the laws of the State of Connecticut, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing or deposit hereof, if any, as shall be conferred by the laws of the several jurisdictions in which this Assignment shall be filed or deposited.

11. The Lessor shall cause copies of all notices and other documents received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the CSA, or at such other address as the Vendor shall designate in writing.

12. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, without the prior written consent of the Lessor, except the right to receive Payments under Paragraph 1 hereof and to enforce any right, power, agreement or indemnity under the Lease (other than any rights, powers, privileges, authorizations or benefits under §§ 6, 9 and 16 of the Lease to the extent they inure to the benefit of the Lessor); provided, however, that if the Vendor does not seek to collect that portion of the Payments which would otherwise be paid to the Lessor pursuant to the second paragraph of Paragraph 1 of this Assignment, the Lessor shall have the right, only so long as no event of default under the CSA has occurred and is continuing, to proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of such obligations or to

recover damages for the breach thereof as provided in § 10(a) of the Lease, but may not, without the prior written consent of the holders of a majority in principal amount of the CSA Indebtedness, declare an Event of Default under or terminate the Lease. Notwithstanding the provisions of the Lease or this Assignment, should the Lessee default in the observance or performance of any obligations contained in §§ 6, 9 or 16 of the Lease to the extent made for the benefit of the Lessor, and such default shall continue for 30 days after written notice thereof from the Lessor to the Lessee, the Lessor shall have the right to proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of such obligations or to recover damages for the breach thereof as provided in § 10(a) of the Lease, but may not, without the prior written consent of the holders of a majority in principal amount of the CSA Indebtedness, declare an Event of Default under or terminate the Lease; provided, however, that the foregoing provision shall not be deemed to prohibit or limit in any way the right of the Vendor to enforce any of the rights and remedies under § 10(b) of the Lease. The right of the Lessor under the preceding sentence shall not affect the rights of the Vendor, before or after the occurrence of an event of default under the CSA, which arise under or with respect to §§ 6, 9 or 16 of the Lease.

13. Anything in this Assignment to the contrary notwithstanding, each and all of the representations, undertakings and agreements in this Assignment made on the part of the Lessor are made and intended not as personal representations, undertakings and agreements by The Connecticut Bank and Trust Company or for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the said trust company solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or responsibility is assumed by or shall at any time be enforceable against the said bank or the Beneficiary on account of any representation, undertaking or agreement of the Lessor or the Beneficiary hereunder (except as provided in the last paragraph of Article 12 of the CSA, the Trust Agreement and Paragraph 7 hereof), either expressed or implied, all such personal liability, if any, being expressly waived by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Estate for the satisfaction of the same.

14. This Assignment may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee shall be deemed the original counterpart and all other counterparts shall be deemed to be duplicates thereof. For evidentiary purposes only, any fully executed counterpart hereof shall be sufficient for establishing the terms of this Assignment. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE CONNECTICUT BANK AND TRUST  
COMPANY, not individually but  
solely as Trustee,

by

[Corporate Seal]

\_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Authorized Officer

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, as Agent,

by

[Corporate Seal]

\_\_\_\_\_  
Assistant Vice President

Attest:

\_\_\_\_\_  
Corporate Trust Officer

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this            day of            1979, before me  
personally appeared            , to me personally  
known, who, being by me duly sworn, says that he/she is an  
Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY,  
that one of the seals affixed to the foregoing instrument is  
the corporate seal of said Corporation, and that said instru-  
ment was signed and sealed on behalf of said Corporation by  
authority of its Board of Directors, and he/she acknowledged  
that the execution of the foregoing instrument was the free  
act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

STATE OF MARYLAND, )  
 ) ss.:  
CITY OF BALTIMORE, )

On this            day of            1979, before me  
personally appeared            , to me personally  
known, who, being by me duly sworn, says that he is an  
Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, that one of the seals affixed to the foregoing  
instrument is the corporate seal of said Corporation, and  
that said instrument was signed and sealed on behalf of said  
Corporation by authority of its Board of Directors, and he  
acknowledged that the execution of the foregoing instrument  
was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

## CONSENT AND AGREEMENT

The undersigned, CONSOLIDATED RAIL CORPORATION (the "Lessee"), the lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease, other than amounts not assigned to the Vendor (as hereinafter defined) pursuant to the Lease Assignment, due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to Mercantile-Safe Deposit and Trust Company, as Agent (the "Vendor"), the assignee named in the Lease Assignment, by 11:00 a.m. Baltimore time, on the date such payment is due, by bank wire transfer of immediately available funds to The Annapolis Banking and Trust Company, Main Street and Church Circle, Annapolis, Maryland, for credit to the Agent's Account No. 52076-1, with a request that The Annapolis Banking and Trust Company advise Mrs. K. M. Tollberg, Assistant Vice President, Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland, that the funds are "RE: Conrail 9/15/79" (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) it shall not be entitled to any abatement of rent or additional rent, reduction thereof or setoff against or recoupment of rent or additional rent, including, but not limited to, abatements, reductions, setoffs or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under the Lease or under the CSA referred to in the Lease Assignment, or against the Builder (as defined in the Lease Assignment) or the Vendor or otherwise;

(3) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Lessor;

(4) the Vendor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and

(5) the Lease shall not, without the prior written consent of the Vendor, be terminated, amended or modified, nor shall any waiver or release be given or accepted with respect thereto nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract for the benefit of the Vendor and its successors and assigns under the laws of the Commonwealth of Pennsylvania and, for all purposes, shall be construed in accordance with the laws of said State.

CONSOLIDATED RAIL CORPORATION,

by

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 15th day of September 1979.

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, as Agent,

by

\_\_\_\_\_  
Assistant Vice President